IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5943 OF 2003

Uddhav Devrao Gaikwad & Ors. ...Petitioners

Versus

Hirabai Marutrao Goghare & Ors. ...Respondents

.....

Mr. Anil V. Anturkar, counsel for Petitioners

Mr. Uday Warunjikar counsel for Respondent.

Mr. Ashok Ranjane h/f Mr. G.S. Godbole for Rspondents 2 to 13, 15 to 22 and 26 to 28.

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 28TH FEBRUARY, 2005

P. C.:-

1. Heard Mr. Anturkar, the learned counsel for the petitioners and Mr. Warunjikar the learned counsel for the respondents.

2. Regular Darkhast No.34 of 2002 came to be filed before the learned Court of C.J.J.D. at Indapur for the execution of the decree passed in Civil Suit No. 145 of 1969 on 28.7.1975. In the said execution proceedings the petitioners filed two applications i.e. Exh.12 filed on or about 1.7.2003 and Exh.30 filed on or about 24.7.2003. The first application at Exh.12 was rejected by order dated 23.7.2003 and

the second application was rejected by order dated 11.8.2003 by the learned C.J.J.D. at Indapur and hence, this petition challenging both these orders.

3. The application at Exh.12 had challenged the execution proceedings itself on various grounds and one of the ground raised was that the decree was passed on 28.7.1975 and the execution proceedings were initiated 27 years thereafter. The issue of limitation was raised and it was submitted that the proceedings initiated after 12 years from 28.7.1975 were hit by limitation. The averments made in the application filed on 1.7.2003 were duly considered by the learned Judge of the trial Court and by her order dated 23.7.2003 she held that all the grounds raised in the application at Exh.12 did not call for any consideration as they were devoid of merits. It appears that on the very next day the petitioners submitted the next application at Exh.30 and prayed for stay to the execution proceedings. The learned Judge held that such an application invoking the provisions under Section 151 of C.P.C. and Order XXI Rule 26 could not be relied upon for staying the execution proceedings.

4. The reasonings given by the trial court in respect of both the impugned orders cannot be held to be perverse or grossly erroneous calling for

interference in this petition under Article 227 of the Constitution. When this Court passed an interlocutory order on 17.9.2003, a reference was made to the Precept forwarded to the Collector for giving effect to the decree which is the subject matter of the execution proceedings and it was pointed out that the agricultural land bearing survey No. 8/1, 8/2, 94/1A, 94/1B and 94/11B were specifically excluded for the partition. This averment finds place in the application at Exh.32 filed in Regular Darkhast No.34 of 2002 and the order passed below Exh.32 is not the subject matter of challenge in this petition. Nevertheless, it is clear in the decree that the properties which were in the possession of the defendant No.7 at the relevant time i.e. agricultural land bearing survey No. 8/1, 8/2, 94/1A, 94/1B and 9/11B have been specifically excluded and therefore, they could not have been part of the precepts as was impressed upon by this Court while passing the said order.

5. If such an application is specifically made to the trial Court, the same will have to be considered on its own merits and more so because the corrections to the precepts cannot be left to the Revenue Officer.

6. In the result, this petition fails and the same

is hereby rejected. If an application for corrections of precepts excluding the partition of the property in possession of the original defendant No.7 is made to the trial Court within a period of two weeks the same shall be heard and decided on its own merits within a period of four weeks thereafter.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2009 OF 2004
IN
WRIT PETITION NO. 5943 OF 2003

Uddhav Devrao Gaikwad & Ors. ...Applicants

Versus

Hirabai Marutrao Goghare & Ors. ...Respondents

.....

Mr. Anil V. Anturkar, counsel for Applicants

Mr. Uday Warunjikar counsel for Respondent.

Mr. Ashok Ranjane h/f Mr. G.S. Godbole for Rspondents 2 to 13, 15 to 22 and 26 to 28.

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 28TH FEBRUARY, 2005

P. C.:-

. In view of disposal of Writ Petition No. 5943 of 2003, this civil application does not survive and the same is disposed of as infructuous.